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Richard Wuest

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICHARD WUEST, individually and on
behalf of a class of similarly situated
individuals,

Plaintiff,

v.

COMPLETE RECOVERY CORPORATION;
and DOES 1 through 10, inclusive,

Defendants.

Case No: 3:17-CV-01674-JD

CLASS ACTION

**JOINT STIPULATION OF DISMISSAL
AND ~~[PROPOSED]~~ ORDER**

FRCP Rule 41(a)(1)(A)(ii)

(Assigned to Hon. James Donato)

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Plaintiff Richard Wuest (“Plaintiff”) and Defendant Complete Recovery Corporation (“Defendant”), by and through their respective undersigned counsel, hereby submit this Joint Stipulation of Dismissal and [Proposed] Order, and stipulate and agree as follows:

WHEREAS, Plaintiff has agreed to dismiss this entire civil lawsuit, with prejudice as to his individual claims and without prejudice as to the alleged putative class action claims.

WHEREAS, Plaintiff has not moved for class certification, and a class has not been certified by the Court. The Parties’ stipulated dismissal of this action does not resolve the claims, issues, or defenses of any putative or certified class. Under Rule 23(e) of the Federal Rules of Civil Procedure, where a class has not been certified, Court approval is not required for dismissal.

1 Fed. R. Civ. P. 23(e) (court approval only required for dismissal of “the claims, issues, or defenses
2 of a ***certified*** class”) (emphasis added); *see also Advisory Committee Notes on 2003 Amendments*
3 *to Rule 23, Subdivision (e), Paragraph (1)* (“The new rule requires [court] approval only if the
4 claims, issues or defenses of a ***certified*** class are resolved by . . . voluntary dismissal.”) (emphasis
5 added).

6 WHEREAS, the Parties are not aware of any member of the alleged putative class who, in
7 reliance upon this action or otherwise, has refrained from bringing a claim identical or similar to
8 any of the claims in this action or who might be prejudiced by dismissal of this action by the
9 Court.

10 For the reasons set forth above and pursuant to the Federal Rules of Civil Procedure,
11 Rule 41(a)(1)(A)(ii), the Parties hereby jointly Stipulate to the dismissal with prejudice of
12 Plaintiff’s individual claims and the dismissal without prejudice of the alleged class action claims
13 and request that the Court terminate all proceedings in this action.

14 The Parties shall bear their own costs and fees associated with this action and the dismissal.

15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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17 Dated: May 22, 2017

KELLER GROVER LLP

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19 By: /s/ Eric A. Grover

ERIC A. GROVER

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21 *Counsel for Plaintiff*
RICHARD WUEST

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23 *Pursuant to Local Rule 5-1(i)(3) I attest that all*
24 *other signatories listed, and on whose behalf the*
25 *filing is submitted, concur in the filing of this*
26 *stipulation and have authorized the filing of this*
27 *stipulation.*

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1 Dated: May 22, 2017

KELLEY DRYE & WARREN LLP

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3 By: /s/ S. Spencer Elg
4 S. SPENCER ELG

5 *Attorneys for Defendant*
6 COMPLETE RECOVERY CORPORATION

7 **ORDER**

8 Pursuant to Stipulation, IT IS ORDERED that this case is dismissed with prejudice
9 as to Plaintiff's individual claims and without prejudice as to the alleged class action claims. The
10 Clerk shall close the case.

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12 DATED: May 23, 2017

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14 _____
15 James Donato
16 United States District Judge
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